

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department of Telecommunications)	
and Energy on its own motion, pursuant to G.L. c. 164,)	
§§ 1E, 76 and 93, into Massachusetts Electric)	
Company's service quality filings, including, but not)	D.T.E. 01-71B
limited to, their service quality filings submitted in)	
response to Service Quality Standards for Electric)	
Distribution Companies and Local Gas Distribution)	
Companies, D.T.E. 99-84)	
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INITIAL BRIEF OF THE ATTORNEY GENERAL

1. INTRODUCTION

Pursuant to the briefing schedule established by the Department of Telecommunications and Energy ("Department") in this proceeding, the Attorney General submits his Initial Brief ("Initial Brief") to address the Service Quality Plan ("SQ Plan") filed by Massachusetts Electric Company and Nantucket Electric Company (collectively, "MECo" or "Company") and the Company's compliance with certain service quality standards ("SQ Standards") established by the Department.

The Attorney General has reviewed the SQ Plan and the related supporting evidence. The Attorney General has also reviewed the Self-Assessment Report filed by the Company in D.T.E. 01-68, of which the Department has taken administrative notice. The Attorney General requests that the Department take administrative notice of all the documents and materials filed in D.T.E.

01-68 and that the Department incorporate by reference in this proceeding the documents and materials filed in D.T.E. 01-68.¹

The Attorney General recommends that the Department approve the Company's proposed plan submitted to December 14, 2001 ("Alternative SQ Plan") to evaluate its service quality.

The Attorney General also recommends that because the Company submitted significant revisions to its data after the close of evidentiary hearings, that the Department order independent data validation prior to the final determination of the Company's penalties for the period beginning May 1, 2001, or in the alternative, that the Department reopen the evidentiary portion of the proceeding for the purpose of evaluating the accuracy of the Company's data.

A. Statement of the Case

On March 14, 2000, the Department, in connection with the merger of Massachusetts Electric Company and Eastern Edison Company, approved a comprehensive rate plan settlement ("Rate Plan Settlement")² and service quality plan ("Original SQ plan") in D.T.E. 99-47 which became effective on May 1, 2000. The Original SQ Plan allowed the Company to earn

¹ The Department, pursuant to C.M.R. § 1.10(3), took administrative notice of the October 29, 2001 Self-Assessment Report filed in D.T.E. 01-68. Procedural Order, p. 2, n.3 (2001).

² The settling parties were the Attorney General, the Associated Industries of Massachusetts ("AIM"), the Division of Energy Resources, ("DOER"), The Energy Consortium ("TEC"), MECo, Eastern Edison Company, New England Power Company, Montaup Electric Company, the New England Electric System, National Grid Group, PLC, and Eastern Utilities Associates. The Rate Plan Settlement required the Company to consult with the settling parties prior to filing revisions to the service quality plan resulting from an order in a generic docket and required the settling parties to work together to develop a proposal to submit to the Department that would modify the Rate Plan Settlement to incorporate any new guidelines.

incentives for superior performance and provided penalties for poor performance.³

On June 29, 2001, the Department issued an Order in D.T.E. 99-84 establishing Service Quality Guidelines (“Guidelines”). *Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies*, D.T.E. 99-84 (June 2001). On September 7, 2001, the Department opened an investigation into the quality of electric service provided by the electric distribution companies, including their service quality filings submitted in response to D.T.E. 99-84. *Investigation of Quality of Electric Service*, D.T.E. 01-71 (2001).⁴ The Department held four public hearings in the Company’s service territory in Brockton, Worcester, Haverhill and Gloucester. The Department held an evidentiary hearing on January 28, 2002.⁵

³ The Department’s order approving the Rate Plan Settlement stated that the order was approved conditionally. “[T]he Department approves the service quality plan proposed by the Petitioners with the condition or caveat that the Department’s order in D.T.E. 99-84 may lead to wholesale replacement, or to significant modifications of some of all of the components of the Petitioners’ plan.” D.T.E. 99-47, pp. 31-32. The Rate Plan Settlement allows the Company to adjust its distribution rates for the effects of any legislative or regulatory changes that impose new or modified existing obligations or duties which individually affect the Company’s costs by more than \$1 million per year. Rate Plan Settlement, p. 11. The Rate Plan Settlement further provides that if revised service quality standards result in a significant difference in the balance of risks, costs and benefits, the quantified differences will be treated as an Exogenous Factor which will affect the amount of penalties the Company owes. Rate Plan Settlement, p. 27.

⁴ The Department stated that its investigation includes, but is not limited to, the SQ plans that companies filed on October 29, 2001, and that it considers its directives to MECo in Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47, at 30-32 (2000) as a basis for applying SQ penalties for the period between the merger/acquisition consummation and the initiation of penalties established in D.T.E. 99-84. Procedural Order, D.T.E. 01-71, p. 2.

⁵ The Attorney General, DOER, and the Utility Workers Union of America intervened in this proceeding. The Department issued 25 information requests which were marked for evidentiary purposes as Exh. DTE 1-1 through Exh. DTE 1-25 and the Attorney General issued 17 which were marked for evidentiary purposes as Exh. AG 1-1 through Exh. AG 1-17. In addition, the Department issued 13 record requests and the Attorney General issued 12 record requests. In its responses to record requests, the Company simultaneously revised its responses (continued...)

The Company and the Attorney General, AIM, DOER, TEC (collectively, the “Settling Parties”) agreed to a revised service quality plan (“Settlement Plan”) which MECo filed on October 29, 2001, in D.T.E. 99-47, 99-84, and D.T.E. 01-71. The Settlement Plan proposed to revise the Rate Plan Settlement.⁶ On October 31, 2001, the Department issued a letter stating that the Settlement Plan was incomplete and that it did not apply the guidelines established in D.T.E. 99-84. The Department asked the Company to file a SQ Plan that applied the Guidelines, and MECo filed that plan (“Compliance SQ Plan”) on November 2, 2001.

On December 5, 2001, the Department, by Letter Order, declined to accept MECo’s Settlement Plan. Letter Order at 7. The Department also assessed the Compliance SQ Plan and determined that some of the SQ guidelines and measures either did not strictly comply with the guidelines of D.T.E. 99-84 or were not consistent with their intent, and directed MECo to file a revised SQ plan (“Revised SQ Plan”) in D.T.E. 01-71B.

B. The Company’s Service Quality Plan

On December 14, 2001, MECo filed an Alternative SQ Plan⁷ which it proposed to

⁵(...continued)

to certain information requests which had already been accepted as evidence in the proceeding. The revisions offered by the Company were not submitted in compliance with the Department’s regulations and should not be considered as part of the evidentiary record in this case. See 220 C.M.R. § 1.11(8) (“No person may present additional evidence after having rested nor may any hearing be reopened after having been closed except upon motion and showing of good cause”).

⁶ The Settlement Plan proposed to apply many of the Guidelines’ provisions but, consistent with the Rate Settlement Plan, proposed doubling the maximum penalty for consistently poor reliability, maintaining the maximum aggregate penalty without reduction for service guarantee payments to customers and providing for both incentives and penalties. The Settlement Plan also proposed to include a measure for distribution line losses.

⁷ The Company filed the Alternative SQ Plan, pre-filed testimony of Robert H. McLaren,
(continued...)

implement on January 1, 2002.⁸ In the Alternative SQ Plan, the Company proposes that performance for calendar year 2000 should be evaluated based on the terms of the Rate Plan Settlement and the Original SQ Plan approved by the Department in D.T.E. 99-47. If the performance is evaluated under the Original SQ Plan, MECo asserts that it earned \$3.675 million dollars⁹ in incentives during the last eight months of 2000, when the plan was in effect.

Exh. MEC-1, p.3, see MECo filing August 8, 2001, D.T.E. 99-47, Att. 8.

The Company further proposes that, because the Department issued its new Guidelines under D.T.E. 99-84 prior to midyear 2001, the Department should evaluate the Company's performance for 2001 according to the Guidelines. Exh. MEC-1, p.3. On December 11, 2001, the Company submitted Compliance SQ Plans (Exh. MEC-1, Att. 1, 3, 5, 6). Application of the

⁷(...continued)

Mark Sorgman and James D. Bouford, and supporting documentation which were labeled as Exh. MEC-1 and MEC-2 for evidentiary purposes.

⁸ The Alternative SQ Plan eliminated the \$20 million threshold for penalties/incentives, eliminated the inclusion of distribution line losses, and included provisions to update the benchmarks each year to reflect the most recent years' historical performance but without changing the first year benchmark. The Company claims that the Alternative SQ Plans match the Guidelines with certain exceptions: (1) if the Company's average distribution rates are less than the state-wide average distribution rate, the Company would earn revenue incentives, rather than only penalty offsets; (2) the historical benchmark for each performance measure would be updated annually, but the original penalty trigger would not be relaxed; (3) if there are three or more consecutive years in which the maximum penalty is assessed, penalties for poor reliability would double; (4) the maximum penalty amount would not be reduced by any service guarantee payments; and (5) although the plan runs through 2009, it would be subject to review and amendment by the Department after 2004. Exh. MEC-1, p. 4. It is unclear from the record what the Company proposes to use as the original trigger point. In Exh. DTE 1-4, it appears that the Company uses the historical data through 2000 to establish the original penalty trigger. The Attorney General accepts this approach.

⁹ However, according to the Company's proposed revised response to Exh. DTE 1-3, submitted on February 5, 2002, MECo asserts that it is entitled to an incentive of \$3,506,000.

Guidelines to the 2001 performance results in estimated SQ Penalties of \$6,371,004¹⁰ for 2001.

The Company proposes to net the incentives earned in 2000 against the penalties earned in 2001, and refund a credit to customers through distribution rates over a period approved by the Department (Exh. DTE 1-14, Exh. MEC-1, p. 24).

Finally, the Company proposes that the Department should apply the Alternative SQ Plan to evaluate its performance for 2002-2009 and that, if approved, the Alternative SQ Plans would be in place for the years 2002-2009. The Company would also waive any rights it may have under the Rate Plan Settlement in D.T.E. 99-47 providing for Exogenous Factors and recovery of those costs through rates.¹¹

On December 17, 2001, the Department issued a Letter Order in D.T.E. 99-84 approving MECo's Revised SQ Plan ("Revised SQ Plan") (revised to incorporate sixteen changes required by the Department and three corrections filed by the Company on December 13, 2001), subject to modification based on the outcome of the Department's investigation in D.T.E. 01-71.¹² On December 21, 2001, DOER, AIM and TEC (collectively, "the Supporting Parties") filed Joint Comments in support of the Company's filing on December 14, 2001. The Supporting Parties support the Company's proposal to apply the terms of the Settlement SQ Plan because that

¹⁰ However, the penalty figure was revised by the Company to \$5,087,403 in Exh. DTE 1-4, and later proposed to be revised to \$5,631,665 on February 5, 2002. According to the Company's witness Robert McLaren, the Company's response to DTE 1-4 contains actual date for 2001, and the calculations for Exh. MEC-1 and Exh. MEC-2 contain estimates. Tr. at 7.

¹¹ Exh. MEC-1, Filing Letter, p. 4 (2001).

¹² The Company considers the SQ Plan to cover the period from May 1, 1999 through October 31, 2001. See Company Letter, December 11, 2001. The Department stated that it would consider the issue of the effective date of the Plans in D.T.E. 01-71. Letter Order, p. 2.

approach complies with the intention of the Supporting Parties that, until superceded by subsequent Department action, the performance of the Company would be evaluated subject to the terms of the Settlement SQ Plan. Joint Comments, p. 2. The Supporting Parties also agreed that the Company's performance for 2001 should be evaluated pursuant to the approved Strict SQ Plan. Finally, the Supporting Parties urged the Department to apply the proposed Alternative SQ Plan to the Company's performance in 2002 through 2009 because it is consistent with the terms of the Settlement SQ Plan and the variations from the Guidelines result in a plan that provides more value for consumers.¹³ Joint Comments, p. 2.

II. THE DEPARTMENT SHOULD EVALUATE THE COMPANY'S SERVICE QUALITY ACCORDING TO THE Alternative SQ Plan PROPOSED BY THE COMPANY BECAUSE IT IS CONSISTENT WITH THE RATE SETTLEMENT PLAN, THE DEPARTMENT'S GUIDELINES IN D.T.E. 99-84 AND G.L. c. 164, § 1E(c).

The Department should apply the standards proposed by the Company in Exh. MEC-1 and Exh. MEC-2 to determine whether, beginning May 1, 2001, MECo met the service quality thresholds established by the Department in D.T.E. 99-84. "SQ measures first and foremost are designed to prevent deterioration of the service quality ratepayers are entitled to receive." *Service Quality Guidelines*, D.T.E. 99-84, p. 44 (August 2000). As the Department has explained, "within the ranges of performance not achieved and of revenues foregone, the purpose is to see that ratepayers get what they pay for and utilities are not unjustly enriched by substandard performance." *Id.* G.L. c. 164, § 1E (c), establishes the penalty provisions for poor

¹³ The Supporting Parties note that the Alternative SQ Plan is the only plan that encourages a distribution company to improve performance over historic levels in exchange for the opportunity to earn incentives for service quality improvements. Joint Comments, p. 3.

service quality by a distribution company.¹⁴

In its June 2001 Order in D.T.E. 99-84, the Department directed the Companies to file a SQ plan that complied with the Guidelines established in the Order. *Service Quality Guidelines*, D.T.E. 99-84, p. 42 (June 2001). The Department acknowledging that several companies, including MECo, had approved SQ Plans in place that varied from the Guidelines, indicated a willingness to consider SQ Plans that deviated from the Guidelines, provided that a company offered full and complete support for its proposal together with the reasons for departures from the Guidelines.¹⁵ *Id.*

Application of the standards proposed by the Company is consistent with the Rate Plan Settlement, to which the Attorney General was a party, and is consistent with the Guidelines and the provisions of G.L. c. 164, § 1E. The Rate Plan Settlement and SQ plan approved by the Department in D.T.E. 99-47 provide long-term rate stability by including a ten-year rate stability plan coupled with a performance-based rate plan that maintains service quality over that period of time. D.T.E. 99-47, p. 9. The Company accrues penalties and incentives that are triggered at a certain threshold.

The Company's performance for calendar year 2000 will be evaluated according to the Rate Plan Settlement and Original SQ Plan, which were approved by the Department in

¹⁴ “ The department shall be authorized to levy a penalty against any distribution, transmission, or gas company which fails to meet the service quality standards in an amount up to and including the equivalent of 2 per cent of such company's transmission and distribution service revenues for the previous calendar year.” G.L. c. 164, §1E(c).

¹⁵ *Massachusetts Electric Company/Eastern Edison Company*, D.T.E. 99-47 (2000), *BEC-Co-ComElec Acquisition*, D.T.E. 99-19 (1999), *Eastern-Colonial Acquisition*, D.T.E. 98-128 (1999), *Eastern-Essex Acquisition*, D.T.E. 98-27 (1999).

D.T.E. 99-47. The Company's performance for 2001 will be evaluated according the Strict Compliance Plan that applies the Guidelines. The Company's performance for 2002-2009 will be evaluated according to the Alternative SQ Plan, which applies the Guidelines and other measures designed to enhance service quality.

The Attorney General supports the application of the standards imposed in the Company's proposed Alternative SQ Plan as of January 1, 2002 through the end of the Alternative SQ Plan period in 2009, subject to review and amendment by the Department after 2004. Application of the Alternative SQ Plan will provide relative certainty for the Alternative SQ Plan period which will benefit the Company's ratepayers. Although the Department could substitute a different plan for the Alternative SQ Plan after its 2004 review, the Company has stated that it will not seek to recover the effects of an Exogenous Factor resulting from such a change. RR-AG-3. The Alternative SQ Plan is a reasonable compromise between the Company's October 29, 2001 Settlement Offer and the Guidelines.¹⁶

Varying from strict application of the Guidelines as proposed by the Alternative SQ Plan will benefit the Company's customers by providing an incentive to keep distribution rates less

¹⁶ The Settlement Offer proposed to revise Meco's SQ Plan that has been in effect as a result of the Department's approval in Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47 (2000). The Offer was jointly sponsored by the Company, the Attorney General, DOER, AIM, and TEC. The Department declined to approve the Offer citing, in part, that because D.T.E. 99-84 was a non-adjudicatory proceeding under G.L. c. 30A, § 10, the Department lacked the authority to approve a settlement (Letter Order, p. 2), and that the Company has not yet offered sufficient justification for significant deviations from the Guidelines in their Offer. *Id.*, at 4. The Department stated, however, that it would consider the Offer on its usefulness and conformity with G.L. c. 164, §1E and the Guidelines. Letter Order at 2. Although the Offer is not currently under consideration as part of the Company's Alternative SQ Plan, the Attorney General supports the application of the Settlement Offer provisions contained in the Alternative SQ Plan.

than the statewide weighted average distribution rate and by doubling penalties for poor performance if the maximum penalty is assessed for three or more consecutive years. In addition, although the historical benchmark for each performance measure will be updated each year, the original trigger for penalties will not be relaxed. These departures from the Guidelines are consistent with the legislative intent of G.L. c. 164, § 1E and 1F(7), that service quality remains the same as or better than levels that existed as of November 1, 1997.

III. THE DEPARTMENT SHOULD FURTHER EVALUATE THE SERVICE QUALITY DATA FOR ALL COMPANIES PRIOR TO ASSESSING SPECIFIC PENALTIES OR INCENTIVES TO ENSURE DATA ACCURACY AND CONSISTENCY

The Company filed its responses to record requests on February 5, 2002, two days after the deadline for filing responses to record requests. The preparation of those responses prompted the Company to revise certain of its responses to data requests previously submitted.¹⁷ See Cover Letter to Revised Information Request Responses, Exh. AG 1-1, Exh. DTE 1-3 and Exh. DTE 1-4, February 5, 2002. The revisions were filed with the Department after the evidentiary hearing and were not offered into evidence pursuant to a motion that demonstrated good cause. The revisions to the data requests affected the amount of proposed penalties and incentives for the years 2000 (proposed Revised Exh. DTE 1-3) and 2001 (proposed Revised Ex. DTE 1-4), as well as the base line to be used to determine the penalty trigger point going forward under the proposed Alternative SQ Plan.

Other than the update of the 2001 residential customer numbers, the revisions appear to

¹⁷ Because the Company filed corrected penalties and incentives late, the Attorney General did not have adequate opportunity to question Company witnesses regarding the corrections or sufficient time to analyze whether other data contain similar problems and should be revised.

be the result of Company errors, inadvertence or misinterpretation. Although the Attorney General understands that the implementation of any service quality plan represents a significant undertaking that may be complicated by a requirement to incorporate the data of affiliated companies, and to conform to the Department's Guidelines,¹⁸ the Legislature and Department have both recognized that it is important that consumers be compensated for the damaging effects of "delinquent performance." *Service Quality Guidelines*, D.T.E. 99-84, p.36, see G.L. c. 164 § 1E . Furthermore, the Act requires the Department to "oversee quality and reliability of service and to require that quality and reliability are the same as or better than levels that exist on November 1, 1997." G.L. c. 164, § 1F (7). If the Department's service quality standards are to have any meaningful effect and hold companies accountable for their service quality performance, the Department must ensure that the historical statistics used for comparison are accurate and compiled in a manner consistent with the Guidelines, and that the Companies' annual performance is reported in a clear and consistent manner. This type of evaluation will assist the Department and the companies in meeting the goals of the Act. See *Performance Assurance Plan*, D.T.E. 99-271, pp. 31-33 (September 5, 2000) (adopting this approach for Verizon Performance Assurance Plan).

If the Department declines to order an independent data review, the Attorney General

¹⁸ The Attorney General has found similar errors, inadvertencies and misinterpretations in the NSTAR service quality benchmark and performance calculations. Therefore, the Attorney General asks the Department to require independent data validation by all utilities before the Department makes a final determination of any penalties or penalty off-sets. The Department need not delay the implementation of any service quality plan beyond 2002 since the data validation may be done quickly and the results used to set the first year penalty incentive levels. It may be determined that periodic random data validation should be continued to maintain the integrity of each company's reporting and penalty assessment.

requests that the Department reopen the evidentiary hearings for the purpose of ensuring data accuracy for the assessment of penalties.

IV. **CONCLUSION**

The Attorney General recommends that the Department approve the Company's proposed Alternative SQ Plan as the method to evaluate its service quality. The Alternative SQ Plan is consistent with the Rate Settlement Plan, the Guidelines and G.L. c. 164, § 1E (c). The Attorney General also recommends that the Department order an independent data validation prior to the final determination of the Company's penalties for the period beginning May 1, 2000, or in the alternative, that the Department reopen the evidentiary portion of the proceeding for the purpose of evaluating accuracy of the Company's data.

Respectfully submitted,

Judith Laster
Assistant Attorney General
Utilities Division
Office of the Attorney General
200 Portland Street, 4th Floor
Boston, MA 02114
(617) 727-2200 ext. 3431

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